

## REMARKS

The Final Office Action mailed March 20, 2008 considered claims 1-27. Claims 1-5, 14, 18, 21 and 23-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Alur* et al. (US 2005/0015641) hereinafter *Alur*, in view of *Wenocur* et al. (US 2002/0178360) hereinafter *Wenocur*. Claims 6-7, 13, 19 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Alur*, in view of *Wenocur* and further in view of *Eastepe* et al. (US 6,731,625) hereinafter *Eastepe*. Claims 8-10, 15 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Alur*, in view of *Wenocur* and further in view of *Mullins* et al. (US 2003/0208505) hereinafter *Mullins*. Claims 11-12 and 16-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Alur*, in view of *Wenocur* and further in view of *Staveley* et al. (US 6,973,491) hereinafter *Staveley*.<sup>1</sup>

By this amendment claims 1, 4-9, 11, 12, 14-16, 18-21, and 23-27 have been amended.<sup>2</sup> Accordingly, claims 1-27 are pending, of which claims 1, 14, 24, and 25 are the independent claims at issue.

The invention is generally directed to configurable collections of computer related metric data. For example, claim 1 recites a method for specifying computer related metric data that is to be delivered to a server from the perspective of an application. Claim 1 defines executing an application at the computer system. Next, claim 1 defines generating metric data related to functionality of the application monitored during execution of the application. The generated metric data includes at least one of performance monitoring data and event log data for the application. Claim 1 then defines storing the metric data related to the monitored functionality of the application at the computer system.

Claim 1 also defines accessing a separately defined manifest that indicates a subset of the generated metric data related to the monitored functionality of the application is to be packaged for delivery to a server. The separately defined manifest is separate from the generated metric data and separate from the application. The extent of the subset of the generated metric data

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the amendments to the claims are found throughout the specification and previously presented claims, including but not limited to paragraphs [0038] – [0044] and Figures 1 and 2.

relative to the total generated metric data is configured in accordance with the desire of a user of the computer system.

Claim 1 then defines automatically sending a schema-based package start command to a quality metric module to cause the subset of the generated of metric data indicated in the separately defined manifest to be packaged for delivery to the server. The schema-based package start command includes elements and attributes of a vocabulary defined in a selection schema. The selection schema defines how subsets of performance monitoring data and subsets of event log data are to be packaged. Lastly, claim 1 defines sending a package send command to the quality metric module to cause the packaged subset of generated metric data related to the monitored functionality of the application to be delivered to the server.

Claim 24 is a computer program product corresponding to method claim 1. Claim 14 is a method claim corresponding to claim 1 from the perspective of a quality metric module. Claim 25 is a computer program product corresponding to method claim 14.

Applicants respectfully submit that the cited art of record does not anticipate or otherwise render the amended claims unpatentable for at least the reason that the cited art does not disclose, suggest, or enable each and every element of these claims.

*Alur* relates to system and method for automatically and dynamically optimizing application data resources to meet business objectives. A system utilizes a declarative specification for application data recovery requirements in terms of application dimensions. (para. [0059]). A systematic approach is provided to map the qualitative QoS associate with each application dimension to a set of technologies to meet the business objectives. (para. [0059]). Example dimensions include recovery time, performance impact, and data recovery time. (para. [0060]). As a result, various different resource optimizations are possible. (Figure 3).

In some embodiments, the system of *Alur* adjusts in response to collected data. (Figure 5 and para. [0124]). The system can collect metrics and track changes for use in revising backup and recovery strategy. (para. [0087]). The metrics comprise run time collection of execution metrics, capture of exception events, and automatic discovery of changes in the application workload and application events. (para. [0087]). Collected information can be fed back into an analytical and mining engine that analyzes the data. (para. [0125]). The analytical and mining engine can use analytical information to calibrate resource utilization models and templates and

to revised existing strategies. (para. [0126]). Revised strategies can then be executed by the system. (para. [0127]).

However, *Alur* provides no mechanism to configure data collection using a separate manifest based on a user's desires. Further, *Alur* provides no mechanism to base decisions on, or even obtain, a subset of collected data related to a monitored application. Additionally, there is no motivation in *Alur* to provide either of these mechanisms since the collected information is specifically defined in the system as information needed to determine if a resource utilization model is to be calibrated and/or a strategy is to be revised. Without all of the specifically defined information, calibrations and revisions could not be accurately performed.

*Wenocur* relates to communicating a secure unidirectional message. *Wenocur* addresses problems related to sending messages to computer systems that have different hardware capabilities, network settings, and user preferences in a manner that preserves the original intent of the message (paras. [0008], [0011], [0014], [0015], [0024], [0038]). *Wenocur* defines a "story" as a fully aware e-mail that is optimized to substantially deliver the intent of an e-mail publisher across a broad range of e-mail architectures. (para. [0071]). For every element in a story there is an underlying textual description of that logical element. In addition there are contextual logical elements as may be needed to insure that the intent of the message may be easily understood in text and audio only representations. (para. [0072]).

In preferred embodiments, all logical elements have corresponding semantic information so that it can be known or determined which elements to use under varying circumstances. (para. [0073]). For example, a contextual logical element can include semantic flags indicating that the element contains text providing an overview of a screen when it is known a recipient can not view the screen. (para. [0073]). Thus generally, when a preferred rendering format is not available, semantic flags can indicate other presentation options that can be selectively presented based on system settings. (paras. [0068] – [0070]). Thus, portions of a story are rendered to a user based on the contents of the story and the client's communication variables.

However, *Wenocur* provides no mechanism to configure data collection using a separate manifest based on a user's desires. Further, *Wenocur* provides no mechanism to base decisions on, or even obtain, a subset of collected data related to a monitored application.

Accordingly, the cited art fails to teach or suggest, either singly or in combination:

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an act of accessing a separately defined manifest that indicates a subset of the generated metric data related to the monitored functionality of the application is to be packaged for delivery to a server subsequent to storing the generated metric data, the separately defined manifest being separate from the generated metric data and separate from the application, the extent of the subset of the generated metric data relative to the total generated metric data configured in accordance with the desire of a user of the computer system;

an act of automatically sending a schema-based package start command to a quality metric module to cause the subset of the generated metric data indicated in the separately defined manifest to be packaged for delivery to the server, the schema-based package start command including elements and attributes of a vocabulary defined in a selection schema, the selection schema defining how subsets of performance monitoring data and subsets of event log data are to be packaged;

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as recited in claim 1, when viewed in combination with the other limitations of claim 1. For at least this reason claim 1 patentably defines over the art of record. For at least this same reason claim 24 also patentably defines over the art of record.

Further the cited art fails to teach or suggest, either singly or in combination:

an act of receiving schema-based package start data from an application, the schema-based package start data indicating that a subset of previously stored metric data related to monitored functionality of the application is to be packaged for delivery to a server, the generated metric data including at least one of performance monitoring data and event log data for the application, the subset of the previously stored metric data indicated in a separately defined manifest that is separate from the application and separate from the generated metric data, the extent of the subset of the previously stored metric data relative to the total generated metric data configured in accordance with the desire of a user of the computer system, the schema-based package start command including elements and attributes of a vocabulary defined in a selection schema, the selection schema

defining how to indicate that subsets of performance monitoring data and subsets of event log data are to be packaged;  
as recited in claim 14, when viewed in combination with the other limitations of claim 14. For at least this reason claim 14 patentably defines over the art of record. For at least this same reason claim 25 also patentably defines over the art of record.

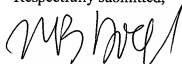
Claims 16 and 27 are amended to correct the informalities identified in the office action.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 20<sup>th</sup> day of May, 2008.

Respectfully submitted,



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